

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

SPAIN AFS, LLC, a subsidiary of)
Taos Industries, Inc.,)
166 Jet Plex Lane)
Madison, Alabama 35758,)

Plaintiff,)

vs.)

UNITED STATES DEPARTMENT)
OF THE AIR FORCE,)
1670 Air Force Pentagon)
Washington, D.C. 20330-1670,)

Defendant.)

CASE NUMBER: _____

JUDGE: _____

DECK TYPE: FOIA/Privacy Act

DATE STAMP: _____

**COMPLAINT FOR
DECLARATORY AND PERMANENT INJUNCTIVE RELIEF
(“REVERSE-FOIA”)**

Plaintiff Spain AFS, LLC (“SAFS”), by counsel, files this complaint
for declaratory and permanent injunctive relief against the United States
Department of the Air Force, and states as follows:

NATURE OF THE ACTION

1. This action arises from the recent decision of the U.S. Department of the Air Force (“USAF”), an agency of the United States Government, to release certain confidential and proprietary information obtained from SAFS pursuant to a Freedom of Information Act (“FOIA”) request submitted by SAFS’s competitor, Lear Siegler Services/EG&E. SAFS requests the Court to declare that the information in question constitutes confidential commercial information that is exempt from disclosure under FOIA Exemption 4 and prohibited from disclosure by the Trade Secrets Act. SAFS also requests the Court to permanently enjoin USAF from releasing the subject information. SAFS is not seeking a preliminary injunction at this time in reliance upon 32 C.F.R. § 286.23(h).

PARTIES

2. Plaintiff SAFS is a Delaware limited liability company with its principal place of business in Huntsville, Alabama. SAFS provides base maintenance and support services related to the operation of military facilities.

3. Defendant USAF is an agency of the United States Department of Defense, an Executive Branch of the United States Government.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §1331 because the action arises under the laws of the United States, including FOIA and the Trade Secrets Act. SAFS also invokes this Court's authority to issue declaratory judgments under 28 U.S.C. §§ 2201-2202. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e)(3).

STATEMENT OF FACTS

5. SAFS is exclusively dedicated to providing maintenance and operational facilities support to military installations. These activities include all non-military functions necessary to maintain an operational military base and include housing, facility maintenance, transportation, commissary functions and other general support activities. SAFS has developed logistic support systems, management methodologies, staffing procedures and reporting mechanisms necessary to support the requirements of military installations and to comply with the U.S. /host country regulations.

6. In response to Solicitation No. FA5613-06-R-5010 dated January 16, 2007 issued by the USAF 700th Contracting Squadron in Kaiserslautern, Germany, SAFS submitted its proposal which detailed the

staffing, management structure/methodology, operational procedures, and associated costs to provide base maintenance/operations support to the Moron and Zaragoza Air Base in Spain. The proposed activities included postal services/communications, safety, occupational health/industrial hygiene and ambulance services, civil engineering support to construct/maintain facilities, food service operations, lodging services, library maintenance, computer and data soft/hardware support, and maintenance/operation of recreational facilities. Additionally, logistics support services were to be provided with regard to aircraft fuel services, terminal services, and vehicle/material management.

7. SAFS's proposal detailed the proprietary procedures and specialized tools to be used to perform the services required under the subject solicitation. Additionally, SAFS's proposal contained a detailed price breakdown relating to the costs associated with performing the activities under the subject solicitation, which was based upon the proposed staffing capabilities/requirements and operational activities disclosed in its technical proposal. A substantial portion of the information submitted in its proposal was deemed to be competition-sensitive and proprietary to SAFS and was identified as such by appropriate legends affixed to its proposal and as set forth in the transmittal letter attached hereto as Exhibit A.

8. Upon an evaluation of the proposals submitted by SAFS and its competitors, USAF Contract Number FA5613-07-C-5400 was awarded to SAFS on July 11, 2007.

9. On November 15, 2007, SAFS received notice of a filing of a FOIA request by its competitor, Lear Siegler Services, Inc./EG&E, seeking a copy of the subject contract to include the statement of work, modifications, protective bargaining agreement, and *the content of SAFS's winning contract proposal*.

10. SAFS provided a written response voicing its objections to the release of its proposal and such other information that relate to proposed unit costs associated with various contract tasks. In its response, SAFS objected to the release of the requested information since a description of its management/operational procedures, staffing methodology/levels/schedules, and associated processes/tools would result in severe competitive harm in future similar procurements.

11. Due to the commonality of the requirements for providing maintenance/operations/logistics services for military bases, access to SAFS's proposal by a competitor would permit it to adopt SAFS's proprietary procedures and management systems and appropriately scale its proposed effort based upon the size of the facility, number of personnel, and

the scope of activities to be supported to establish costs proposed by SAFS in subsequent procurements thereby permitting it to “ratchet-down” its bid price.

12. SAFS acknowledges that the release of the total contract costs are releasable under FOIA but, in this instance, the delivery of its technical proposal which sets forth the level of effort, staffing requirements, management structure and procedures, together with the proposed management tools, all of which have been denoted as proprietary to SAFS and may be correlated with its proposed costs which would result in severe competitive harm to SAFS.

13. Notwithstanding SAFS’s objection to the release of its technical proposal on the grounds that it disclosed unique proprietary operating procedures, management methodologies, staffing structure, personnel policies, together with such other information which would permit the competitor to infer SAFS’s pricing structure, USAF, by letter dated January 31, 2008, indicated that it was to release a copy of the contract, which disclosed unit prices, together with SAFS’s technical proposal to the competitor. The decision to release the confidential and proprietary information of SAFS to its competitor was received from the USAF via e-mail on February 1, 2008. In the e-mail communication, the USAF officials

represented that the subject materials would not be released prior to ten (10) working days after receipt of such communication by Taos Industries, Inc., in order to permit SAFS an opportunity to seek judicial review. By filing hereof, SAFS seeks such review.

COUNT I

(FOIA EXEMPTION 4)

14. SAFS hereby incorporates by reference paragraphs 1 through 13 above.

15. The information at issue is confidential commercial information obtained from a person that is exempted from disclosure under FOIA Exemption 4, 5 U.S.C. § 552(b)(4). Release of the information by USAF is therefore not in accordance with the law under Section 706 of the A.P.A., 4 U.S.C. § 706.

COUNT II

(TRADE SECRETS ACT)

16. SAFS hereby incorporates by reference paragraphs 1 through 15 above.

17. The information at issue constitutes trade secrets under the Trade Secrets Act, 18 U.S.C. § 1905. Disclosure by USAF of the

information at issue is prohibited by the Trade Secrets Act and therefore not in accordance with the law under Section 706 of the A.P.A., 5 U.S.C. § 706.

COUNT III

(ARBITRARY AND CAPRICIOUS AGENCY ACTION)

18. SAFS hereby incorporates by reference paragraphs 1 through 17 above.

19. USAF's decision to release the information at issue is arbitrary and capricious under the Section 706 of the A.P.A., 5 U.S.C. § 706.

COUNT IV

(DECLARATORY JUDGMENT ACT)

20. SAFS hereby incorporates by reference paragraphs 1 through 19 above.

21. This Court has authority pursuant to 28 U.S.C. §§ 2201-2202 to declare the rights of SAFS with respect to the information at issue and USAF's proposed action, as follows:

a. The information at issue is confidential commercial information, was voluntarily obtained from a person (SAFS), is customarily kept confidential by SAFS, and therefore is protected by FOIA Exemption 4, 5 U.S.C. § 522(b)(4), and the Trade Secrets Act, 18 U.S.C. § 1905;

b. The information at issue is confidential commercial information obtained from a person (SAFS), there is currently actual and potential competition, release or disclosure of the information would likely result in substantial competitive harm to SAFS in current and/or future competitions for the same or similar products and services, and the information therefore is protected by FOIA Exemption 4, 5 U.S.C. § 522(b)(4), and the Trade Secrets Act, 18 U.S.C. § 1905; and

c. USAF's decision to release the information at issue is arbitrary, capricious, or otherwise contrary to law in violation of the Administrative Procedures Act, 5 U.S.C. §§ 701-706.

PRAYER FOR RELIEF

WHEREFORE, SAFS respectfully requests the Court to:

(A) Declare that the information at issue is confidential commercial information, was voluntarily obtained from a person (SAFS), and is customarily kept confidential by SAFS, and is therefore protected by FOIA Exemption 4, 5 U.S.C. §§ 522(b)(4), and the Trade Secrets Act, 18 U.S.C. § 1905;

(B) Declare that the information at issue is confidential commercial information obtained from a person (SAFS), there is currently actual and potential competition, and the release or disclosure of the information would

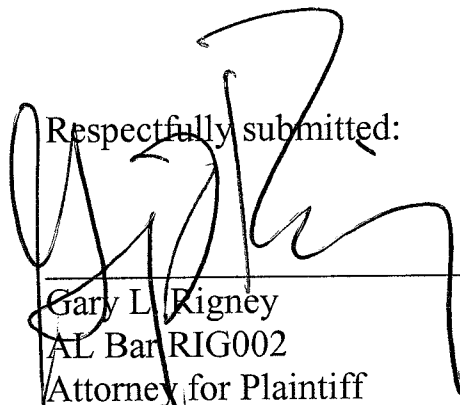
likely cause SAFS to suffer substantial competitive harm in current and/or future competitions for the same or similar products or services, and therefore the information is protected by FOIA Exemption 4, 5 U.S.C. § 522(b)(4), and the Trade Secrets Act, 18 U.S.C. § 2905;

(C) Declare that USAF's decision to release the information at issue is arbitrary, capricious, or otherwise contrary to law in violation of the Administrative Procedure Act, 5 U.S.C. §§ 701-706;

(D) Permanently enjoin USAF, and its officers, agents and employees, and those acting in concert with them, from disclosing the information at issue; and

(E) Order such other and further relief as may be deemed just and proper by the Court.

Respectfully submitted:



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Technical Proposal For:

***Spain Base Maintenance Contract (SBMC)
Solicitation No. FA5613-06-R-5010***

Submitted To:

***Ms. Inge Jenkins
700 Contracting Squadron/LGCD, Unit 3115
Am Opelkreisel, ROB, Geb. 164
67663 Kaiserslautern, Germany***

Submitted By:

***Agility First Support
1725 Duke Street
Suite 450
Alexandria, VA 22314***

DISCLOSURE STATEMENT

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed -- in whole or in part -- for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this Offeror as a result of -- or in connection with -- the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets marked with the footnote legend at the bottom of this page.

STATEMENT OF AGREEMENT

Agility First Support hereby accepts all terms, conditions, and provisions included in the solicitation and agrees to furnish any or all items upon which prices are offered at the price set opposite each item.

Authorized Negotiator:

Kevin Reulas
Vice President, Business Development
Agility Defense & Government Services
Phone: (703) 417-6000, Fax: (703) 417-6020

A handwritten signature in black ink, appearing to read "Kevin Reulas", written over a horizontal line.

Signature

Proposal Authorization:

George Allen
Vice President, Operations
Agility Defense & Government Services
Phone: (703) 417-6000, Fax: (703) 417-6020

A handwritten signature in black ink, appearing to read "George Allen", written over a horizontal line.

Signature